

TENNESSEE VALLEY OPERATING )  
 ENGINEERS HEALTH FUND, ) Civil Action No. \_\_\_\_\_  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES WILSON COMPANY, and )  
 DEWAYNE WILSON, )  
 )  
 Defendants. )

Tennessee Valley Operating Engineers Health Fund (Plaintiff) complaining of James Wilson Company (Defendant) and Dewayne Wilson (Wilson), alleges as follows:

2. The Plaintiff is a welfare plan as defined in ERISA at 29 U.S.C. §1002 (1). Jurisdiction is premised upon 29 U.S.C. § 1132(e)(1), and venue is proper in this district because the Plaintiff is administered here.

3. The Plaintiff is primarily funded by contributions remitted by multiple participating employers pursuant to negotiated collective bargaining agreements. All principal and income

from such contributions and investments thereof is held and used for the exclusive purpose of providing welfare benefits to participants and beneficiaries of the Fund after paying administrative and other reasonable expenses.

4. Defendant is an employer and party in interest as those terms are defined in ERISA at 29 U.S.C. §§ 1002(5) and 1002(14)(c).

5. During all pertinent times, Defendant was a party to a collective bargaining agreement. Pursuant to this agreement, Defendant was to pay certain contributions to the Plaintiff on behalf of covered employees. Pursuant to this agreement, Defendant was bound by the provisions of the trust agreement which created the Plaintiff, and Defendant was thereby obligated to pay contributions on behalf of employees covered by the collective bargaining agreement.

6. Plaintiff operates on the basis of an employer self-reporting payment system whereby participating employers such as Defendant identify those employees for whom contributions are owed, identify the weeks worked by the covered employees, and based upon employee work history reported, the employers make contributions and payments to the Plaintiff.

7. The collective bargaining agreement and trust agreement require prompt payment of all such contributions, failing which a delinquent employer may be assessed with attorney's fees and other fees for late payment as permitted by law, plus interest on unpaid contributions. Plaintiff operates pursuant to written procedures which authorize the entry of a judgment against an employer for contributions owed to include by mandate of the Court the greater of a doubling of the interest or liquidated damages based upon unpaid contributions in the amount of twenty percent (20%), all as allowed by 29 U.S.C. §§ 1132(g)(2)(C)(i) and (ii).

8. Section 306(a) of the Multiemployer Pension Plan Amendments Act of 1980, adding Section 515 of ERISA, 29 U.S.C. § 1145, provides that every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of the collective bargaining agreement shall, to the extent not inconsistent with law, make contributions in accordance with the terms and conditions of such plan or such agreement.

9. Defendant has breached the above-referenced provisions of ERISA, the collective bargaining agreement, and the trust agreement whereby the Plaintiff was created and operates, such breach occurring in July 2018 and thereafter by virtue of Defendant failing to pay contributions and interest due thereon and having failed to timely submit reports with the employee work history for employees.

10. The trust agreement by virtue of which Plaintiff was created and operates provides in pertinent part that employer contributions such as those owed by Defendant to Plaintiff are an asset of Plaintiff when due. Wilson decides on behalf of Defendant which creditors of Defendant to pay and when to pay them. Beginning in July 2018, Wilson used assets in the form of contributions owed to Plaintiff to pay creditors of Defendant. Wilson controls the financial affairs of Defendant and is an ERISA fiduciary personally liable under 29 U.S.C. 1103, 1104 and 1109 for using funds of Defendant to pay other creditors instead of Plaintiff.

11. Despite demand by the Plaintiff that Defendant perform its statutory and contractual and trust obligations with respect to making contributions to the Fund, Defendant has neglected and refused to pay the amounts that are due as a consequence of the conduct described herein, and Defendant currently owes an outstanding principal amount without regard to accumulated interest. Defendant owes accumulated interest on the unpaid contribution as a result

of its conduct as described herein. Wilson is jointly and severally liable to Plaintiff for the unpaid contributions and interest.

12. The failure of Defendant to pay contributions on behalf of its employees will cause Plaintiff to suffer irreparable harm; further, employer delinquencies such as those of Defendant adversely affect and impact upon the financial integrity of the Fund, and the continued delinquency will cause the Plaintiff to lose the benefit of interest income that it would otherwise earn and will cause the Plaintiff to incur additional administrative expenses in connection with the remedying of the delinquencies of Defendant.

13. Copies of this Complaint will be served upon the Secretary of Labor and the Secretary of the Treasury by certified mail in accordance with the provisions of ERISA Section 502(h), 29 U.S.C. § 1132(h).

WHEREFORE, Plaintiff requests the following relief:

(a) A permanent injunction enjoining Defendant from violating the provisions of ERISA, the collective bargaining agreement, and the trust agreement requiring payment of contributions.

(b) A judgment against Defendant and Wilson, jointly and severally, in favor of Plaintiff for all contributions that are owed as of the date of the judgment plus the greater of double interest or single interest plus liquidated damages and all attorney fees and costs incurred in connection with this action.

(c) For such further or different relief as the Court may deem proper or just.

Respectfully submitted,

s/R. Jan Jennings

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